COUNTY OF MILWAUKEE
Interoffice Memorandum

DATE: February 4, 2002

TO: County Board Chairman Karen M. Ordinans

FROM: Jerome J. Heer, Director of Audits
Rob Henken, County Board Director of Research

SUBJECT: Report on County Sick Leave Payouts

ISSUE

On January 24, 2002, the Milwaukee County Board of Supervisors received a report from outside legal counsel (Dwight H. Ellis III of Whyte Hirschboeck Dudek S.C.) regarding the legality and advisability of rescinding or modifying certain employee benefit enhancements adopted in late 2000 and early 2001. While the report stated that the County's ability to modify or rescind pension benefits was limited, it suggested that the County did have legal standing to modify or rescind enhanced sick leave benefits for its non-represented employees, and to negotiate such changes with its collective bargaining units.

Mr. Ellis further recommended that before considering possible changes to sick leave benefits, the County should undertake a "quick study" to determine the fiscal consequences of potential modifications. He suggested that if the study warranted a change in the sick leave benefit for fiscal or other reasons, then policymakers should impose either a monetary or percentage "cap" on accrued sick leave payments. He also commented that "the study may reveal that the 'damage' is already done with this benefit (since it is limited to pre-1994 hires) and future claims may not present fiscal problems."

After receiving this recommendation, the County Board Chairman directed the Department of Audit and County Board staff to work jointly on the study recommended by legal counsel. Specifically, the Chairman asked for a report that would outline the fiscal impacts associated with increased sick leave payouts caused by the recent surge of County retirements; the countywide fiscal impacts of potential modifications to existing sick leave benefit payout methods; and potential impacts for County departments associated with potential sick leave modifications.

BACKGROUND

In late 2000 and early 2001, the County Board adopted 2001-2004 wage and benefit packages for the County's non-represented employees and all employees represented by collective bargaining units except for deputy sheriffs. A major component of each of those packages was a change in the manner in which the County treats sick leave hours accrued by retiring employees. Attached to this report as **Attachment I** is a reproduction of the section of the Milwaukee County Code of General Ordinances that contains the new sick allowance provisions.

Prior to enactment of the 2001-2004 wage and benefit packages, retiring employees were allowed to take unused sick leave either in the form of a lump sum payment or as “retirement leave.” Under the retirement leave option, if a retiring employee had 200 hours of accrued sick leave, he or she could opt to stay on the payroll for that additional 200 hours after the official date of retirement. Time spent on retirement leave was credited as pension service. In addition, employees could continue to accrue additional sick, vacation and personal hours as if they were actually working.

The amount of accrued sick leave that could be utilized under either the lump sum or retirement leave option was capped for non-represented workers at 400 hours plus 16 hours for each additional 100 hours (or increment thereof) of accrued sick leave. As a result, a hypothetical non-represented retiree with 1,000 hours of accrued sick leave could remain on the payroll for an additional 496 hours after retirement (400 hours plus 96 hours for the remaining 600 hours). The retiree would get paid at his or her rate of pay at the time of retirement. The cap for represented workers varied by individual collective bargaining unit and generally ranged from 240 to 400 hours plus 16 hours for each additional 100 hours. Members of the deputy sheriffs union had no lump sum payout option. Instead, they were able to receive additional pension service credit for all accrued sick leave.

The 2001-2004 wage and benefit packages eliminated the retirement leave option for covered employees. Instead, all employees hired before January 1, 1994 now receive a lump sum payment, and the payment now reflects ***all*** accrued sick leave. Because the cap was eliminated, a retiring employee hired before 1994 who has accumulated 1,000 hours of sick leave receives a lump sum payment that is the product of 1,000 multiplied by the hourly rate of pay at the time of retirement. Previously, that employee would have received a maximum lump sum payment or retirement leave equivalent to 496 hours.

For retiring employees who were hired on or after January 1, 1994, the new procedures stipulate that the value of accrued sick allowance be calculated in the same manner as for pre-1994 hires (i.e. number of accrued hours multiplied by hourly rate of pay at the time of retirement). However, instead of receiving the value of accrued sick allowance as a lump sum payment, retirees hired after 1994 can utilize the value of the accrued hours only as a credit to purchase County health insurance after retirement.

Finally, the adopted packages contain a new provision allowing elected officials who arrived in office on or after January 1, 1994 to accumulate sick leave similar to County employees. At the time of retirement, such elected officials receive credit for 60% of the sick leave hours they would have accrued if they were a regular County employee. They can then utilize the value of that credit to purchase health insurance after retirement (similar to a post-1994 non-elected employee). This provision does not apply to elected officials who arrived in office prior to 1994 because those officials already receive fully paid health insurance coverage after retirement, provided that they have been employed by the County for at least 15 years.

When these sick allowance revisions were first proposed and discussed by the Department of Human Resources (DHR), it was assumed that there would be little or no fiscal impact. An internal memorandum prepared by DHR in the spring of 2000 stated that “in 1999, the average employee who retired from County service received payment for 267 hours of accrued sick allowance. Based on our experience in 1999, this benefit is unlikely to result in any added cost to the County.”

In an April 4, 2001 memorandum to the County Board Chairman, the Director of Human Resources and Fiscal and Budget Administrator further indicated that during the initial evaluation of alternative approaches to labor discussions, the "cost of sick leave alternative proposals was seen as not increasing costs due to the average amount of sick leave historically paid out." The memorandum states that in the spring of 2001, however, "it was realized that the sick leave payout provisions contained in the labor agreements would impact the County's liability for funding sick leave."

The County was required to "book" a liability of $4.3 million for proprietary/internal service funds in 2000 to account for the additional sick leave liability created by the new wage and benefit packages.[1] The memorandum indicated that the County had an additional sick leave liability of $9 million for General Fund departments, which did not have to be booked and could be handled on a "pay-as-you-go" basis. This calculation was "based on a sick allowance calculation for every County employee times a factor for the likelihood of their retirement." The memorandum also stated that DHR had identified 788 employees currently eligible to retire with a projected sick leave cost of $16.1 million for all County departments. It was estimated that $7.9 million of this amount was attributable to the changes adopted in the 2001-2004 packages, while the remaining $8.2 million was a liability that otherwise would have existed.

UPDATED FISCAL INFORMATION[2]

Table I below provides updated information regarding the County's 2002 fiscal liability for lump sum sick leave payments to employees who are eligible to retire in 2002. This information indicates that as of January 1, 2002, 1,350 individuals were eligible to retire during 2002. If those individuals did in fact retire in 2002 – a highly unlikely scenario – then the County's sick leave payouts would total $28.2 million. Under the County's former sick leave payout policies, the liability for payments to employees eligible to retire in 2002 would have been $12.3 million, leaving a total of $15.9 million that is attributable to the recent changes.[3]

TABLE I
Milwaukee County Employees Eligible to Retire in 2002

Employee Classification	No. of Employees	Sick Balance (Hr.)	Liability
Elected	10	1,803	$91,866
ECP	111	155,139	$6,321,270
Non-Represented	344	346,387	$9,169,342
Represented (Non-Sheriff)	824	637,382	$12,612,527
Sheriff's Deputies	61	68,063	0
TOTAL	**1,350**	**1,208,774**	**$28,195,005**

[1] The fiscal impact of this action ultimately was reduced to $2.8 million because $492,000 was charged to the Airport and a $1.1 million offset was taken from an overfunding of a previous sick leave liability charged to the General Fund.

[2] **Attachment II** provides a description of the assumptions that were utilized to compile updated fiscal information and limitations associated with the data compiled for this report.

[3] This report focuses on the County's fiscal liability for those employees who are eligible to retire in 2002. There is considerable additional liability associated with employees who become eligible to retire in subsequent years. It is estimated, for example, that the potential sick leave payout liability for employees who become eligible for retirement in 2003 (exclusive of those employees identified in the 2002 figure) is an additional $3.7 million. The estimate for those eligible to retire in 2004 (again, exclusive of those employees identified in the 2002 and 2003 figures) is an additional $3.1 million.

A more accurate picture of the County's fiscal liability for sick leave payments must include the surge in retirements that occurred in January 2002. **Table II** breaks down eligible retirees at the beginning of 2002 into two categories: those that already have retired and those that remain active. *This breakdown indicates that as of January 31, 2002, the County had already incurred an obligation of $4.8 million in sick leave payments to 148 retirees, leaving a remaining liability of $23.4 million*. **Table III** breaks down the 148 retirees by department.

TABLE II
2002 Eligible Milwaukee County Retirees – Already Retired vs. Still Active

Employee Classification	2002 Eligible that Retired as of 1/31/02	Payouts	No. of 2002 Eligible Still Active	Liability
Elected	2	$83,967	8	$7,899
ECP	28	$1,909,835	83	$4,411,435
Non-Represented	64	$2,105,384	280	$7,063,958
Represented (Non-Sheriff)	53	$661,724	771	$11,950,803
Sheriff's Deputies	1	0	60	0
TOTAL	**148**	**$4,760,910**	**1,202**	**$23,434,095**

TABLE III
2002 Retirees as of 1/31/02 by Department

Department	No. of Retirements	Sick Leave Payouts
County Board	2	$28,998
Department of Audit	1	$33,056
County Executive	1	$57,263
Corporation Counsel	2	$152,846
Department of Labor Relations	3	$137,814
Department of Human Resources	2	$156,478
DOA-Fiscal Affairs	1	$1,658
IMSD	4	$145,680
DOA-Economic Development	1	$15,421
Combined Court Related Operations	6	$76,946
Department of Child Support Enforcement	3	$115,888
Register of Deeds	1	0
Sheriff	18	$856,130
House of Correction	5	$217,792
District Attorney	2	$85,118
Airport	5	$110,413
DPW-Architect/Environment Services	1	$81,407
DPW-Highway Maintenance	1	$8,458
DPW-Fleet Maintenance	4	$68,255
DPW-Facilities Management	6	$53,758
Behavioral Health Division	25	$744,985
Department on Aging	3	$81,232
Department of Human Services	24	$548,954
Department of Parks	27	$982,360
TOTAL	**148**	**$4,760,910**

Perspective on the magnitude of the 2002 retirements can be obtained by comparing the first month of 2002 to 2001. In all of 2001, the County paid out $1.7 million in accrued sick allowance, as compared to $4.8 million in the first month of 2002 alone. In fact, only 121 individuals retired in all of 2001, compared to the 148 that retired in the first month of this year. The average sick allowance payment in 2001 was $14,109, while the average payment in 2002 is $32,168.

Table III indicates that the 2002 fiscal impact on County departments that is associated with these retirements is significant. However, these impacts will be tempered somewhat by an accounting procedure that will be utilized by the Department of Administration (DOA). DOA has indicated that accounting regulations will allow payments for sick leave that become due within 60 days of the first pay period of 2002 – but that were accrued during previous years – to be paid out of 2001 departmental budgets.[4] As a result, early analyses indicate that approximately $2.2 million of the $4.8 million obligation can be accounted for in the 2001 budget year.[5] This will have a negative impact on the 2001 year-end surplus/deficit calculation and may cause some departments to run deficits in 2001, but it will spare departments from having to absorb the full impact of the January 2002 retirements in their 2002 budgets.

It also should be noted that the $4.8 million obligated to date for 2002 sick leave payouts may be offset to some extent by lower pension payouts. While an in-depth analysis has not yet been performed, it is likely that a significant number of the 148 individuals who have retired so far in 2002 – in part to take advantage of substantial sick allowance payouts – also have forsaken a significant percentage of their potential retention incentive bonus. The retention incentive bonus provides for a 7.5% add-on to the final average salary calculation for pre-1982 employees for each year they work past January 1, 2001 (up to a total of 25%). Employees who retired early in 2002 will receive slightly more than a 7.5% add-on, but they have forsaken their ability to build that number up to 25%. The Pension Board actuary has indicated that the cost of the retention incentive bonus to the pension fund – and its impact on the County's pension fund contribution – will be recalculated to take into account this development.

In regard to potential 2002 retirees who remain active, the information above indicates that there are a total of 1,202 such employees (out of a total workforce of approximately 6,600) and that they stand to receive a total of $23.4 million of sick leave payouts. Of those 1,202 employees, 831 (69%) are represented and presumably only would be impacted by sick leave payout modifications if their collective bargaining unit agreed to such modifications. That leaves a total of 371 non-represented employees and elected officials (out of a countywide total of approximately 1,500) who are eligible to retire in 2002 and who could be impacted by any changes to existing sick leave benefits that the County Board may pursue on its own. The total 2002 liability for this group is $11.5 million. Should the County Board only wish to apply modifications to elected officials and members of the Executive Compensation Plan (ECP), then a total of 91 potential 2002 retirees would be affected (out of a countywide total of about 250 ECP employees and 32 elected officials).

It is interesting to note that while ECPs, other non-represented workers and elected officials comprise only 31% of the active workers who are eligible to retire in 2002, the sick leave payout for these workers is 49% of the County's total liability. As a result, modifications to sick leave

[4] The accounting and budgeting issues associated with sick leave payouts for retiring employees are extremely complex. **Attachment III** provides a summary of accounting and budgeting issues that are relevant to the sick leave discussion.
[5] The entire total cannot be funded from 2001 budgets because some employees who retired in January had several weeks of accrued vacation time and personal days, which pushes the date of their sick leave payout past the first 60 days of 2002.

payouts for these workers would impact less than a third of potential retirees but almost half of the County's 2002 sick leave liability.

Table IV provides a breakdown by department of the total number of ECP, elected and non-represented employees who are eligible to retire in 2002 and their potential sick leave payouts. Departments that are not listed have no 2002 liability.

TABLE IV
Active ECP, Elected Officials and Non-represented Employees
Eligible to Retire in 2002 by Department

Department	No. Eligible to Retire	Potential Sick Leave Payouts
County Board	11	$80,996
Department of Audit	7	$185,310
County Executive	3	$41,625
County Executive – Veterans	1	$741
DBD Division	3	$66,888
Corporation Counsel	6	$222,202
Department of Human Resources	15	$427,772
DOA-Risk Management	2	$53,974
DOA-Fiscal Affairs	8	$300,357
DOA-Purchasing	4	$120,665
IMSD	23	$927,792
DOA-Economic Development	1	$2,703
DOA-Housing	5	$116,818
Combined Court Related Operations	27	$599,842
Department of Child Support Enforcement	11	$220,956
Election Commission	6	$58,183
Treasurer	2	$24,599
Register of Deeds	1	0
Sheriff	23	$945,122
House of Correction	18	$403,298
District Attorney	8	$562,002
Medical Examiner	1	$55,701
Airport	11	$350,324
DPW-Architect/Environment Services	5	$147,750
DPW-Highway Maintenance	6	$306,658
DPW-Facilities	10	$387,830
DPW-Administration	5	$127,092
Behavioral Health Division	55	$1,947,385
County Health Related Programs	5	$128,044
Department on Aging	12	$228,399
Department of Human Services	42	$997,494
Department of Parks	26	$1,136,668
Zoo	8	$308,103
TOTAL	**371**	**$11,483,293**

COMPARABLES

In considering options for modifying the County's sick leave provisions, policymakers may wish to consider the manner in which other governmental entities treat accrued sick leave for retirees. **Attachment IV** is a survey conducted in early January by the Department of Human Resources of the sick leave payout policies of 29 municipal and state governments and public universities. This survey indicates the following:

- 28 of the 29 entities surveyed provide for some form of cash payout of accrued sick leave. Of those 28, all but two place some type of "cap" on the amount of accrued sick leave that is paid out to retiring employees.

- 19 of the 29 entities utilize some form of a percentage cap, i.e. retirees can only be paid for a fixed percentage of the value of their accrued sick leave upon retirement. In several cases, the percentages are staggered based on length of service. Several of the entities using a percentage cap also utilize a fixed dollar cap or a cap on the number of hours that can be utilized (e.g. 50% up to $30,000 or 50% up to 120 hours). In addition, several of the entities utilize only a cap on maximum hours/days.

- Two of the entities utilize a dollar cap. Coincidentally, the amount of the dollar cap utilized by each is $30,000.

The State of Wisconsin – which is included in the DHR survey – allows retiring employees to convert the current value of all unused sick leave to credits that can be utilized to offset the cost of monthly health insurance premiums. In addition, for employees who retire with at least 15 years of service, the State provides an additional match of up to 52 hours per year of accrued sick leave multiplied by the number of years of service up to 26 years. For employees who retire with at least 26 years of service, the match is a maximum of 104 hours per year of accrued sick leave multiplied by the number of years of service after 26 years.

The City of Milwaukee is not included in the DHR survey. The City's method of compensating employees for accrued sick allowance at retirement is complicated and differs for many of its various collective bargaining units. In general, according to the City's employee benefits manager, accrued sick leave is capped at 30 days (240 hours) for represented employees and 42 days (336 hours) for management employees. Employees receive a lump sum payment when they retire. For uniform employees (e.g. police and fire), accrued sick leave generally is used to reduce health insurance costs for those who retire before the age of 65.

In considering the above information and comparing Milwaukee County's sick leave policies to those of other entities, policymakers should keep in mind that such a comparison does not take into account the other array of benefits provided by each entity. Ultimately, policymakers may wish to balance any conclusions reached regarding the generosity of County sick leave benefits with information regarding the total benefit packages provided to employees by other state and municipal governments.

THREE POTENTIAL SICK LEAVE MODIFICATION SCENARIOS

In light of the County Board's stated desire to investigate a reduction in sick leave payouts for certain employees, estimated fiscal impacts associated with three potential reduction scenarios were examined. Each of the three scenarios address only non-represented workers, as legal counsel has indicated that any changes to sick allowance procedures for represented workers would have to be negotiated with their collective bargaining units. Policymakers should recognize that these scenarios do not constitute recommendations by the authors of this report, but were selected simply for illustrative purposes.

The three scenarios that were considered are outlined below:

- **Scenario #1: cap on accrual of sick leave hours of 400 hours plus 16 hours for each additional 100 hours.** Under this scenario, all non-represented employees would only be able to receive a lump sum payment for 400 hours of accrued sick leave plus 16 hours for each additional 100 hours (or increment thereof). Payment would be based on the individual's salary at the time of retirement. This scenario was selected because it is similar to the treatment of sick allowance for non-represented employees prior to the adoption of the 2001-2004 wage and benefit packages.

- **Scenario #2: 60% cap on payment for accrued sick leave hours.** Under this scenario, retirees would be eligible for a lump sum payment equivalent to 60% of their accrued sick leave hours multiplied by their rate of pay at the time of retirement. A percentage cap on sick leave benefits was one of the options cited by Dwight Ellis in the legal opinion he submitted to the County Board. Mr. Ellis specifically mentioned a 60% or 70% cap, and the 60% figure was selected for illustrative purposes.

- **Scenario #3: $30,000 cap on payment for accrued sick leave hours.** Under this scenario, retirees would be eligible for a lump sum payment equivalent to their total number of accrued sick leave hours multiplied by their rate of pay at the time of retirement up to a maximum payment of $30,000. An "absolute" cap was another option cited by Mr. Ellis in his legal opinion. The $30,000 figure was selected because this figure was utilized by the two entities in the DHR survey that utilize a dollar amount for their "absolute" cap.

Table V below lays out the overall impact of each of the three scenarios on potential sick leave payments to active workers who are eligible to retire in 2002.

TABLE V
Potential Reduction in Liability from Sick Leave Payout Policy Modifications

Employee Classification	Active 2002		400 Plus 16		60% Cap		$30,000 Cap	
	No.	Liability	Liability	Reduction	Liability	Reduction	Liability	Reduction
Elected	8	$7,899	0	$7,899	$4,740	$3,160	$7,899	0
ECP	83	$4,411,435	$1,755,174	$2,656,261	$2,646,861	$1,764,574	$2,180,836	$2,230,599
Non-Rep.	280	$7,063,958	$3,191,526	$3,872,432	$4,238,375	$2,825,583	$5,097,198	$1,966,760
TOTAL	**371**	**$11,483,292**	**$4,946,700**	**$6,536,592**	**$6,889,976**	**$4,593,317**	**$7,285,933**	**$4,197,359**

Table V shows that the County potentially could reduce by $4.2 million to $6.5 million its liability for payouts to active employees who are eligible to retire in 2002 by adopting one of the three options for non-represented employees. Should the County only adopt the modifications for ECPs and elected officials, then its reduced liability would range from $1.8 million to $2.7 million. Scenario I (400 hours plus 16) would yield the biggest savings, while Scenario II (60%

cap) would yield the smallest when applied only to ECPs and elected officials. Scenario III ($30,000 cap) would provide for the smallest amount of savings when applied to all non-represented workers, but would have a relatively larger impact on ECPs.

Policymakers should keep in mind that these calculations only apply to employees who are eligible to retire in 2002. Any reduction in sick allowance payments adopted by the County Board also would produce significant savings from employees who become eligible to retire in later years. In addition, if these modifications were applied to employees hired after January 1, 1994, they would produce additional savings by reducing the amount of the credits such employees would receive to purchase health insurance after they retire (see "Additional Policy Considerations" below for further discussion of post-1994 hires).

In addition to requesting information regarding the potential countywide fiscal impacts of various sick leave modifications, the County Board also requested information regarding possible programmatic impacts resulting from an additional surge of retirements. In order to provide such insight, **Table VI** provides a breakdown of the dollar amounts that employees would stand to lose under each scenario. It is impossible to read the minds of individual employees and weigh the competing issues that enter into retirement decisions. This breakdown, however, illustrates the number of individuals who would have a strong incentive to retire solely from the perspective of potential loss of sick leave payout dollars should the County Board decide to modify existing policies. It should be recognized that the incentive to retire from a potential loss of sick leave dollars would be accompanied for most eligible retirees by a disincentive to retire in order to remain in the workforce for an additional two years and collect the full 25% retention incentive bonus.

TABLE VI
Potential Losses to Non-represented Employees and Elected Officials from Sick Leave Payout Policy Modifications

	400 Plus 16	60% Cap	$30,000 Cap
Employees Losing > $50,000	34	4	29
Employees Losing $25,000 - $50,000	61	53	38
Employees Losing < $0 - $25,000.	192	295	82
Employees Losing Zero	84	19	222
TOTAL	**371**	**371**	**371**

If it were assumed that a loss of $25,000 or more in sick allowance payouts would serve as a strong incentive for an individual to retire, then **Table VI** indicates that adoption of Scenario I (400 plus 16) would produce the largest number of retirements, while Scenario II (60% cap) would produce the smallest. If $50,000 was considered a more realistic threshold, then Scenario I would narrowly beat out Scenario III ($30,000 cap) for largest number of potential retirements, while Scenario II would pose little risk. **Table VII** breaks down by department the individuals who would stand to lose $25,000 and $50,000 or more in order to demonstrate those County departments that potentially could be impacted the most from adoption of each of the three scenarios.

TABLE VII
Departmental Breakdown of Individuals that Stand to Lose the Most from Potential Sick Leave Payout Policy Modifications

Department	400 Plus 16		60% Cap		$30,000 Cap	
	> $25,000	> $50,000	> $25,000	> $50,000	> $25,000	> $50,000
Behavioral Health	16	9	12	2	12	9
Parks	12	4	6	1	8	3
Sheriff	11	3	8	0	8	3
IMSD	10	5	6	0	7	3
Human Services	7	1	3	0	5	1
District Attorney	5	4	5	1	5	5
Combined Courts	5	1	2	0	3	1
DPW-Fac. Mgmt.	5	0	2	0	2	0
DPW –Hwy. Maint.	3	1	1	0	1	1
DOA-Fiscal Affairs	3	1	1	0	2	1
Airport	3	2	2	0	2	1
Human Resources	3	0	3	0	3	0
Zoo	2	1	2	0	2	0
House of Correction	2	0	0	0	0	0
Corp. Counsel	1	1	1	0	1	1
Aging	1	1	1	0	1	0
Audit	1	0	0	0	1	0
DOA-Procurement	1	0	1	0	1	0
Child Support Enf.	1	0	0	0	0	0
DPW-Arch/Env	1	0	0	0	0	0
DPW-Admin.	1	0	1	0	1	0
CHRP	1	0	0	0	0	0
Medical Examiner	0	0	0	0	1	0
DOA-Housing	0	0	0	0	1	0
TOTAL	**95**	**34**	**57**	**4**	**67**	**29**

Table VII indicates that the Behavioral Health Division, Parks Department, Sheriff and IMSD potentially stand to lose the greatest number of workers to retirement as a result of sick leave policy modifications (assuming that potential loss of sick leave dollars is a driving factor in retirement decisions). As a result, policymakers may wish to consider the programmatic impact on those departments in particular should they choose to pursue modifications.

ADDITIONAL POLICY CONSIDERATIONS

The decision on whether and to what extent the enhanced sick leave benefit recently adopted by the County Board should be modified or rescinded cannot be guided solely by the projected fiscal and departmental impacts outlined above. Decisions in this regard also must take into account several additional policy considerations and potential indirect fiscal impacts, including the following:

- One of DHR's primary motivations in proposing the sick leave changes in the 2001-2004 packages was a desire to discourage employees from "abusing" their sick allowance. It was hoped that the opportunity to receive a payment for the full value of accrued sick leave would discourage workers from using sick days as "days off," especially as they neared retirement age and especially for those who possessed more than 400 hours of accrued sick allowance. Based on information provided by DOA, the number of sick leave/excused absence hours used by County employees in 2001 did in fact decrease by 2.6%, though it is impossible to determine to what extent the change in sick allowance policies contributed to this decrease.

Policymakers should recognize that efforts to “roll back” or reduce the enhanced sick leave benefit could produce the opposite impact of that originally intended, i.e. employees would have a decreased incentive to accrue sick hours and a greater incentive to use those hours prior to retirement. Increased use of sick leave, of course, could have negative fiscal implications for departments due to a need for increased overtime as well as negative programmatic implications and decreased worker productivity.

- While Dwight Ellis clearly stated in his written and verbal comments his strong opinion that the County has legal authority to modify sick leave benefits for non-represented workers in the same manner in which it has traditionally modified other non-pension benefits, he also noted that “there is always the possibility that the Wisconsin courts” would rule otherwise. Policymakers must weigh that possibility and its associated fiscal liability against the fiscal benefits that a change in sick allowance policies would generate. There is a chance that the County will be sued if it attempts to modify or rescind sick leave benefits for existing employees without their consent. Should the County lose a legal challenge, it is possible that it would be liable not only for a restoration of benefits to previous levels and its own legal costs, but also for any legal fees incurred by the employees who initiated the legal action against the County.

- The County Board should carefully consider the effective date of any modifications to the treatment of accrued sick leave, both from the perspective of affected employees and from the perspective of the operations of County departments. For example, if any legislative changes proposed by the Board were to take effect upon passage and publication in the official County newspaper of record, then dozens of employees could choose to retire immediately. The impact of another immediate surge in retirements on departmental operations should be considered and compared to the potential impacts associated with an effective date that would occur two or three months or more into the future.

  Supervisors also may wish to consider the complexity of the decision facing employees who are eligible for retirement should sick leave payouts be substantially modified. Those who would stand to lose a significant amount of their potential sick allowance payout would have to weigh that potential loss against the benefits associated with remaining in the County workforce, including the potential for many to see their retention incentive bonus grow with each day they remain on the job. This may be a difficult and complicated decision for some employees, and it could be argued that they should at least have a short period of time to consider their options before any reduction in sick leave benefits would take effect. It should also be noted that a January 11, 2002 memorandum sent by the County Board Chairman to all County employees indicated that employees would be “kept informed of actions that are considered by the Board” that may impact their pension and sick leave benefits.

- If policymakers elect to modify or rescind the new sick leave benefits for all non-represented workers, then they should consider the possibility that certain groups of such workers may seek to unionize in order to protect themselves from such treatment in the future. The County always has sought to achieve relative parity between the benefits provided to non-represented and represented employees, and a reversal of this informal policy could ignite efforts to organize among certain classes of non-represented workers. It is impossible to determine whether there would be negative fiscal impacts associated with such increased representation were it to occur.

- Another "parity-related" concern involves the potential that certain individuals may not be willing to accept promotions if significant differences in benefits exist for different classifications of workers. For example, if represented workers are able to receive full payment for accrued sick allowance when they retire, while non-represented workers receive a far lesser amount, there may be a strong disincentive for an employee to accept a promotion to a non-represented position. The same dynamic also would apply if policymakers elected to reduce sick leave benefits for members of the ECP while retaining existing benefits for other non-represented workers.

- Most of the discussion regarding potential modifications to sick leave payouts has centered on those employees hired prior to January 1, 1994. This is understandable given that the County is liable for cash payouts to those employees – as opposed to credits for the purchase of County health insurance – and given that very few individuals hired after 1994 will be eligible to retire anytime soon. Still, policymakers should recognize that the provision allowing post-1994 hires to receive health insurance credits for the full value of their accrued sick allowance will have a very real fiscal impact on the County in future years. In essence, this provision allows such employees to receive health insurance that is fully paid by the County for several months after retirement. The intent of the provision was to provide post-1994 hires some degree of parity with long-time workers, who receive fully paid health insurance upon retirement provided that they have accrued 15 years of service. Policymakers may not wish to backtrack on that intent, but to the extent that they are considering sick leave payout caps for certain pre-1994 employees, they may also wish to consider the fiscal benefits of adopting similar caps for those hired after 1994.

- In his report to the County Board, Mr. Ellis suggested that if the County does elect to modify sick leave benefits, it should then consider taking steps to obtain a favorable ruling from the IRS that would allow employees to roll a lump sum sick leave payout into an Individual Retirement Account. Such a ruling not only would benefit recipients of lump sum sick leave payouts by providing them with a means of deferring the payment of income taxes on those payouts, but also would benefit the County by allowing it to eliminate the payment of payroll taxes. After the County Board has decided on a course of action regarding the possible modification of sick allowance benefits, it would be wise to consider suggesting policy direction to the Pension Board regarding a request for an IRS ruling.

RECOMMENDATION

This report was prepared per the direction of the County Board Chairman to provide information for Supervisors that they could use to formulate policy decisions regarding the County's treatment of accrued sick allowance. <u>It is recommended that this report be referred to the Committees on Finance and Audit and Personnel and that it be scheduled as an informational item</u>. Department of Audit and County Board Research staff are ready to assist the County Board in developing policy options and in determining the fiscal impacts of any policies the County Board may wish to pursue.

Jerome J. Heer
Director of Audits

Rob Henken
County Board Director of Research

Attachments

c.c. County Board of Supervisors
County Executive F. Thomas Ament
Earl R. Hawkins, Jr., Director of Administration
Terry Kocourek, Fiscal and Budget Administrator
Jertha Ramos-Colon, Acting Director of Human Resources
Scott Manske, Controller

ATTACHMENT I

Section 17.184 Sick Allowance Balance On Retirement

(1) In the event membership in the Employes' Retirement System began prior to January 1, 1994, the member shall receive full payment of all accrued sick allowance at the time of retirement. The total payment shall equal the number of total hours of sick pay accrued at the time of retirement times the hourly rate applicable to the valuation of sick pay at the time of the member's retirement. Such payment shall be made in a lump sum, and shall not be included in the calculation of the member's final average salary for pension calculation purposes, nor shall such payment impact the member's total pension service credit or the date that retirement benefits will commence. If approved by the Internal Revenue Service, the member shall receive this payment through the Employes' Retirement System, unless the member is covered by a collective bargaining agreement that requires the County to provide the member with the option of directly receiving this payment immediately upon retirement or receiving the payment through the Employes' Retirement System. In the event a member of the Employes' Retirement System who is eligible to retire dies prior to retirement, the full value of the member's accrued sick allowance shall be paid to the member's spouse or the beneficiary of the member's retirement benefit.

(2) In the event membership in the Employees Retirement System began on or after January 1, 1994, the member shall have the full value of their accrued sick allowance at the time of retirement (total hours accrued times the hourly rate at the time of retirement) credited toward the cost of health insurance after retirement. Such health insurance coverage must commence within ten years of the member's retirement. When the amount credited is exhausted, the employee or eligible beneficiary may opt to continue their membership in the County Group Health Benefit Program upon payment of the full monthly cost as noted in 17.14(7) CGO. In the event a member of the Employes' Retirement System who is eligible to retire dies prior to retirement, the full value of the member's accrued sick allowance shall be credited toward the cost of continuing health insurance coverage for the member's spouse or beneficiary of the member's retirement benefit if such spouse or beneficiary was eligible for coverage prior to the member's death.

(3) At the time of retirement, members of the Employes' Retirement System who became members on or after January 1, 1994 and are not eligible for the accrual of sick allowance shall be credited with an amount equivalent to 60% of the total number of hours the member could have acquired had sick allowance been granted, solely for the purpose of determining a benefit under the provisions of this section.

ATTACHMENT II

Data Limitations

For a proper understanding of the information provided in this analysis, several assumptions and data limitations must be disclosed.

- All calculations are based on County elected officials and employees identified as eligible for retirement some time during the course of calendar year 2002. This includes individuals who have filed for retirement with effective dates in 2002.

- Sick leave balances are based on figures contained in the County's master payroll file as of January 19, 2002 with an adjustment for anticipated increases during 2002. Based on the average 2001 County sick leave utilization rate, 31 hours was added to all balances in the population except for the 148 employees who had filed for retirement as of January 31, 2002.

- Wage rates were increased as appropriate to adjust for scheduled mid-year wage increases. Three percent was added to Sheriff's Deputies wages as an assumption, since that employee classification has yet to come to terms with the County on a 2001-2004 contract.

- Service credits were obtained from a Department of Human Resources data base and include applicable military service and City of Milwaukee transferable credits. However, there are a limited number of individuals in County employment who have applicable service credits by virtue of Milwaukee County work experience under the Comprehensive Employment and Training Act (CETA) which were not readily available to us and which are not included in this analysis.

- Because of the above adjustments and omissions for generalized analytical purposes, small variances in data and calculated payouts may exist in comparison to individual employees' actual figures. Such variances are minor and are not materially relevant to any policy decisions.

ATTACHMENT III

Accounting and Budgeting Issues

The accounting and budgeting issues associated with sick leave payouts for retiring employees are complex. The way in which the liability is addressed depends on the fund that specific County departments fall under, i.e. proprietary/internal service fund departments, or those County departments in the general fund.

For proprietary/internal service fund departments (IMSD, Airport, Mental Health, DPW-A&E, DPW-Transportation Services, DPW-Fleet, DPW-Facilities Services and DOA-Risk Management), the County is required under Government Accounting Standards Board (GASB) regulations to fund a calculated sick leave and vacation liability. This liability consists only of that sick leave that has a probability of being paid out at retirement. The County has been funding this liability on an annual basis since 1992 with annual amounts going into a reserve. The annual funding amounts are recorded in the County's operating accounts with a final entry recorded each year when the County closes its books. The Controller's Office is currently computing the amount of the final entry for 2001. Last year's final entry for 2000 was significant in order to account for the new labor agreement sick leave payout provisions. Sick leave payouts for retiring employees are not budgeted in advance. Although the existing reserve could be a short-term funding source for sick leave payouts during 2002, the reserve must be restored to its appropriate funding level by the close of the County's books for 2002, and each year thereafter.

For general fund departments, the County is not required by GASB regulations to book the full cost of vacation and sick leave. Instead, accounting rules (GASB 16) only require the general fund to record a liability for the " . . . amount left unpaid at the end of the reporting period that normally would be liquidated with expendable available financial resources." The County has interpreted this to mean that it can record a liability for any sick leave costs incurred in the first sixty days of the new year. As a result, the Department of Administration (DOA) is planning to record (accrue) a liability in 2001 for all sick leave payouts which occur in January and February of 2002. These amounts will be recorded (accrued) to individual department budgets and subsequently fall to the County's bottom line for 2001 tax levy purposes. The Controller's Office in connection with the Department of Human Resources (DHR) is currently computing these amounts and will process them through to departments in closing the County's books for 2001.

In addition, some employees who retired in 2001 deferred their sick leave payout pending a final IRS ruling regarding potential rollover of the sick payout to an IRA. For these amounts, the DOA is also planning to record (accrue) a liability in 2001 to respective department budgets. Again, these amounts will fall to the County's 2001 bottom line. The Controller's Office in conjunction with DHR is currently computing these accrual amounts.